



Election w/EXT(3)/#9  
J 1.9.03

PATENT

Our Docket: P-NI 4552

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE JAN 07 2003

In re application of: )  
J. Michael Salbaum )  
Serial No.: 09/754,997 )  
Filed: January 4, 2001 )  
For: NOPE POLYPEPTIDES, )  
ENCODING NUCLEIC ACIDS )  
AND METHODS OF USE )

Examiner: L. Helms

TECH CENTER 1600/2900

Group Art Unit: 1642

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

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37 C.F.R. 1.10 ON THE DATE INDICATED ABOVE, AND IS  
ADDRESSED TO: COMMISSIONER FOR PATENTS WASHINGTON, D.C. 20231.

Commissioner for Patents  
Washington, D.C. 20231

Susan Faye L. Francisco  
(TYPED OR PRINTED NAME OF PERSON MAILING PAPER OR FEE)

Susan Faye L. Francisco  
(SIGNATURE OF PERSON MAILING PAPER OR FEE)

Sir:

RESPONSE TO RESTRICTION REQUIREMENT

Responsive to the Restriction Requirement mailed  
August 28, 2002, consideration of the following remarks is  
respectfully requested.

The Restriction Requirement alleges that the  
application is directed to five distinct and independent  
inventions. Provided below are the five inventions set forth in  
the Restriction Requirement.

Group I : Claims 1 through 4, directed to Nope  
polypeptides;

Group II : Claims 5 through 7, directed to an antibody  
specific for Nope;

Group III : Claim 8, directed to a method of detection  
with a Nope antibody;

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Group IV : Claims 9 through 15 and 20, directed to nucleic acids encoding Nope, vectors and host cells, and kits; and

Group V : Claims 16 through 19, directed to a method of detecting Nope nucleic acids by hybridization.

Election of one of the inventions is required under 35 U.S.C. § 121. Although the restriction requirement is traversed for the reasons set forth below, Applicants elect<sup>✓</sup> the claims set forth in Group IV, claims 9 to 15 and 20, for examination.

The Restriction Requirement is traversed with respect to the division of the claims of Group IV from the claims of Groups V. While the claims of Groups IV and V are patentably distinct, it is submitted that a thorough search of the claims of either group will likely reveal art relevant to the examination of the claims of the other group. For example, a thorough search of the method claims of Group V, which are directed to methods of using the claimed oligonucleotides of Group IV, necessarily entails a search of the claims of Group IV. Thus, a thorough search of the claims of Group IV will, of necessity, reveal information relevant to the examination of the claims of Group V and, therefore, division of the claims into these groups would result in duplicative searches. Therefore, examination of the claims of Group IV with the claims of Group V together should not

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be an undue burden on the Examiner. Accordingly, reconsideration of the restriction requirement is respectfully requested.

The Restriction Requirement also indicates that, if Group IV is elected, an election of species is required between species L-X, which are directed to specific SEQ ID NOS. Applicant elects for examination species L, DNA encoding SEQ ID NO:2.

Applicant elects the claims set forth in Group IV, claims 9-15 and 20, for examination. Applicant also elects species L, DNA encoding SEQ ID NO:2. Applicant respectfully requests that the Restriction Requirement be reconsidered and that the claims of Group IV be examined with the claims of Group V. The Examiner is invited to call the undersigned agent or Cathryn Campbell if there are any questions.

Respectfully submitted,

December 30, 2002  
Date

  
Deborah L. Cadena  
Registration No. 44,048  
Telephone No.: (858) 535-9001  
Facsimile No.: (858) 535-8949

CAMPBELL & FLORES LLP  
4370 La Jolla Village Drive  
Suite 700  
San Diego, California 92122  
USPTO CUSTOMER NO. 23601



01-02-01

#057 1042

AMENDMENT TRANSMITTAL LETTER			DOCKET NUMBER: P-NI 4552	
SERIAL NO: 09/754,997	FILING DATE: January 4, 2001	EXAMINER: L. Helms	GROUP ART UNIT:1642	
INVENTION: NOPE POLYPEPTIDES, ENCODING NUCLEIC ACIDS AND METHODS OF USE				

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TO COMMISSIONER FOR PATENTS

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Susan Faye L. Francisco  
(TYPED OR PRINTED NAME OF PERSON MAILING PAPER OR FEE)  
Susan Faye L. Francisco  
(SIGNATURE OF PERSON MAILING PAPER OR FEE)

Transmitted herewith is a Response to Restriction Requirement, mailed August 28, 2002, in the above-identified application.

- \_\_\_ Small Entity status of this application has been established under 37 CFR 1.27.
- X Petition for a three-month Extension of Time is enclosed (in duplicate).
- \_\_\_ Terminal Disclaimer with fee under 37 C.F.R. 1.20(d) is enclosed.
- X No additional claims fee is required.
- \_\_\_ An additional claims fee is required and has been calculated as shown below:

CLAIMS AS AMENDED

	NUMBER AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR		NUMBER OF EXTRA CLAIMS PRESENTED		RATE			FEE	
							SMALL ENTITY	OTHER ENTITY		SMALL ENTITY	OTHER ENTITY
TOTAL CLAIMS	20	-	20	-	0	x	\$9	\$18	=	\$	\$0
INDEPENDENT CLAIMS	5	-	5	-	0	x	\$42	\$84	=	\$	\$0
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM			___ YES		___ X ___ NO		\$140	\$280	=	\$	\$0
							TOTAL ADDITIONAL FEE			\$	\$0

- \* If the "HIGHEST NUMBER PREVIOUSLY PAID FOR" is less than 20, write "20" in this space.
- \*\* If the "HIGHEST NUMBER PREVIOUSLY PAID FOR" is less than 3, write "3" in this space.
- \*\*\* If the difference between the "NUMBER AFTER AMENDMENT" and the "HIGHEST NUMBER PREVIOUSLY PAID FOR" is less than 0, write "0" in the space.
- \_\_\_ Please charge my Deposit Account No. 03-0370 the amount of \$\_\_\_\_\_. A duplicate copy of this sheet is enclosed.

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- X A check in the amount of \$920.00 is enclosed, which covers the fee for a three-month extension of time.
- X The Commissioner is hereby authorized to charge payment of any fees associated with this communication or credit any overpayment to Deposit Account No. 03-0370. A duplicate copy of this sheet is enclosed.
- X The Commissioner is hereby authorized to charge to Deposit Account No. 03-0370 any fees under 37 CFR 1.17 which may be required under 37 CFR 1.136(a)(3) for an extension of time in any concurrent or future reply requiring a petition for extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,



Deborah L. Cadena  
Registration No. 44,048  
CAMPBELL & FLORES LLP  
4370 La Jolla Village Drive  
7<sup>th</sup> Floor  
San Diego, California 92122  
858-535-9001  
USPTO CUSTOMER NO. 23601